

CHUCK P. EBERTIN (SBN 161374)
cebertin@velaw.com
VINSON & ELKINS LLP
525 University Avenue, Suite 410
Palo Alto, CA 94301-1918
Tel: (650) 687-8200 / Fax: (650) 618-1970

CHRISTOPHER V. RYAN (*pro hac vice*)
cryan@velaw.com
JANICE L. TA (*pro hac vice*)
jta@velaw.com
VINSON & ELKINS LLP
The Terrace 7
2801 Via Fortuna, Suite 100
Austin, TX 78746
Tel: (512) 542-8400 / Fax: (512) 542-8612

DAVID J. TOBIN (*pro hac vice*)
dtobin@velaw.com
VINSON & ELKINS LLP
2001 Ross Avenue, Suite 3700
Dallas, TX 75201
Tel: (214) 220-7700 / Fax (214) 220-7716

*Attorneys for Plaintiff and
Counterclaim Defendant*
SANDISK CORPORATION

DESMARAIS LLP
Jon T. Hohenthanner (*pro hac vice*)
jhohenthanner@desmaraisllp.com
John C. Spaccarotella (*pro hac vice*)
jspaccarotella@desmaraisllp.com
Ameet A. Modi (*pro hac vice*)
amodi@desmaraisllp.com
230 Park Avenue
New York, NY 10169
Telephone: 212-351-3400
Facsimile: 212-351-3401

BLACK CHANG & HAMILL LLP
Bradford J. Black (SBN 252031)
bblack@bchllp.com
Andrew G. Hamill (SBN 251156)
ahamill@bchllp.com
333 Bush Street, Suite 2250
San Francisco, CA 94104
Telephone: 415-813-6210
Facsimile: 415-813-6222

*Attorneys for Defendant and
Counterclaim Plaintiff*
ROUND ROCK RESEARCH LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SANDISK CORPORATION,

Plaintiff and Counterclaim Defendant,

vs.

ROUND ROCK RESEARCH LLC,

Defendant and Counterclaim Plaintiff.

Case No. 11-cv-05243-RS

**[PROPOSED]
STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS.

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,

SanDisk Corporation and Round Rock Research LLC hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4 below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS.

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
 2 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
 3 consultant in this action, and (2) at the time of retention, is not anticipated to become an employee of
 4 a Party or of a Party's competitor.

5 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
 6 sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party
 7 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

8 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: sensitive
 9 “Confidential Information or Items” representing computer code and associated comments and
 10 revision histories, formulas, engineering specifications, or schematics that define or otherwise
 11 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to
 12 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided
 13 by less restrictive means.

14 2.10 House Counsel: attorneys who are employees of a party to this action. House
 15 Counsel does not include Outside Counsel of Record or any other outside counsel.

16 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
 17 entity not named as a Party to this action.

18 2.12 Outside Counsel of Record: attorneys who are not employees, partners or principals
 19 of a party to this action but are retained to represent or advise a party to this action and have
 20 appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on
 21 behalf of that party.

22 2.13 Party: any party to this action, including all of its officers, directors, employees,
 23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

24 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 25 Material in this action.

26 2.15 Professional Vendors: persons or entities that provide litigation support services
 27 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
 28 storing, or retrieving data in any form or medium) and their employees and subcontractors.

1 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
2 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
3 CONFIDENTIAL – SOURCE CODE.”

4 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
5 Producing Party.

6 **3. SCOPE.**

7 The protections conferred by this Stipulation and Order cover not only Protected Material (as
8 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
9 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
10 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
11 However, the protections conferred by this Stipulation and Order do not cover the following
12 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
13 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
14 publication not involving a violation of this Order, including becoming part of the public record
15 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
16 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
17 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
18 Protected Material at trial shall be governed by a separate agreement or order.

19 **4. DURATION.**

20 Even after final disposition of this litigation, the confidentiality obligations imposed by this
21 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
22 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
23 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
24 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
25 time limits for filing any motions or applications for extension of time pursuant to applicable law.

26 **5. DESIGNATING PROTECTED MATERIAL.**

27 5.1 Each Party or Non-Party that designates information or items for protection under this
28 Order must take care to limit any such designation to specific material that qualifies under the

1 appropriate standards. To the extent it is practical to do so, the Designating Party must designate for
 2 protection only those parts of material, documents, items, or oral or written communications that
 3 qualify – so that other portions of the material, documents, items, or communications for which
 4 protection is not warranted are not swept unjustifiably within the ambit of this Order.

5 If it comes to a Designating Party's attention that information or items that it designated for
 6 protection do not qualify for protection at all or do not qualify for the level of protection initially
 7 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
 8 mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 10 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 11 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
 12 designated before the material is disclosed or produced. Designation in conformity with this Order
 13 requires:

- 14 (a) for information in documentary form (e.g., paper or electronic documents, but
 15 excluding transcripts of depositions or other pretrial or trial proceedings), that the
 16 Producing Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL
 17 – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE
 18 CODE" to each page that contains protected material.

19 A Party or Non-Party that makes original documents or materials available for
 20 inspection need not designate them for protection until after the inspecting Party has
 21 indicated which material it would like copied and produced. During the inspection
 22 and before the designation, all of the material made available for inspection shall be
 23 deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the
 24 inspecting Party has identified the documents it wants copied and produced, the
 25 Producing Party must determine which documents, or portions thereof, qualify for
 26 protection under this Order. Then, before producing the specified documents, the
 27 Producing Party must affix the appropriate legend ("CONFIDENTIAL," "HIGHLY
 28

CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected Material.

- (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony and specify the level of protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within the 21 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or other proceeding to include Protected Material so that the other parties can ensure that only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these

requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

- (c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. A Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication

are not sufficient) within 7 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Challenging Party may file and serve a motion to remove confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) if the parties agree that the meet and confer process will not resolve their dispute. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. The Challenging Party may file a motion challenging a confidentiality designation if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. All parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL.

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
3 information or item designated “CONFIDENTIAL” only to:

- 4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
5 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
6 information for this litigation and who have signed the “Acknowledgment and
7 Agreement to Be Bound” that is attached hereto as Exhibit A;
- 8 (b) the officers, directors, and employees (including House Counsel) of the Receiving
9 Party to whom disclosure is reasonably necessary for this litigation and who have
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 11 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
12 reasonably necessary for this litigation and who have signed the “Acknowledgment
13 and Agreement to Be Bound” (Exhibit A);
- 14 (d) the court and its personnel;
- 15 (e) court reporters and their staff, professional jury or trial consultants, and Professional
16 Vendors to whom disclosure is reasonably necessary for this litigation and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and
- 18 (f) the author or recipient of a document containing the information or a custodian or
19 other person who otherwise possessed or knew the information.

20 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
21 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered
22 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
23 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
24 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

- 25 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
26 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
27 information for this litigation and who have signed the “Acknowledgment and
28 Agreement to Be Bound” that is attached hereto as Exhibit A;

- 1 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in
 2 patent prosecution activities, (2) to whom disclosure is reasonably necessary for this
 3 litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound”
 4 (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1),
 5 below, have been followed;
- 6 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for
 7 this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
 8 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph
 9 7.4(a)(2), below, have been followed;
- 10 (d) the court and its personnel;
- 11 (e) court reporters and their staff, professional jury or trial consultants, and Professional
 12 Vendors to whom disclosure is reasonably necessary for this litigation and who have
 13 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and
- 14 (f) the author or recipient of a document containing the information or a custodian or
 15 other person who otherwise possessed or knew the information.

16 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
 17 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information
 18 or Items to Designated House Counsel or Experts.

- 19 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
 20 Party, a Party that seeks to disclose to Designated House Counsel any information or
 21 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 22 ONLY” pursuant to paragraph 7.3(b) first must make a written request to the
 23 Designating Party that (1) sets forth the full name of the Designated House Counsel
 24 and the city and state of his or her residence and (2) describes the Designated House
 25 Counsel’s current and reasonably foreseeable future primary job duties and
 26 responsibilities in sufficient detail to determine if House Counsel is involved, or may
 27 become involved, in any patent prosecution activities.

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years, and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 10 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within 7 days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local

Rule 79-5 and General Order 62, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure. In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House Counsel or Expert.

8. PROSECUTION BAR.

Absent written consent from the Producing Party, any individual who receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information shall not be involved in the prosecution of patents or patent applications relating to flash memory design, operation or fabrication, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid any doubt, "prosecution" as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, ex parte reexamination or inter parties reexamination). This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information is first received by the affected individual and shall end two (2) years after final termination of this action.

1 **9. SOURCE CODE.**

- 2 (a) To the extent production of source code becomes necessary in this case, a Producing
3 Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE
4 CODE” if it comprises or includes confidential, proprietary or trade secret source
5 code.
- 6 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”
7 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in
9 Paragraph 8, and may be disclosed only to the individuals to whom “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as
11 set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.
- 12 (c) Any source code produced in discovery shall be made available for inspection, in a
13 format allowing it to be reasonably reviewed and searched, during normal business
14 hours or at other mutually agreeable times, at an office of the Producing Party’s
15 counsel or another mutually agreed upon location. The source code shall be made
16 available for inspection on a secured computer in a secured room without Internet
17 access or network access to other computers, and the Receiving Party shall not copy,
18 remove, or otherwise transfer any portion of the source code onto any recordable
19 media or recordable device. The Producing Party may visually monitor the activities
20 of the Receiving Party’s representatives during any source code review, but only to
21 ensure that there is no unauthorized recording, copying, or transmission of the source
22 code.
- 23 (d) The Receiving Party may request paper copies of limited portions of source code that
24 are reasonably necessary for the preparation of court filings, pleadings, expert reports,
25 or other papers, or for deposition or trial, but shall not request paper copies for the
26 purpose of reviewing the source code other than electronically as set forth in
27 paragraph (c) in the first instance. The Producing Party shall provide all such source
28 code in paper form, including bates numbers and the label “HIGHLY

CONFIDENTIAL – SOURCE CODE.” The Producing Party may challenge the amount of source code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute resolution.

- (e) The Receiving Party shall maintain a record of any individual who has inspected any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies of any printed portions of the source code in a secured area. The Receiving Party shall only make additional paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case.

10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE,” that Party must:

- (a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
- (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
- (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL,”

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” or “HIGHLY CONFIDENTIAL –
 2 SOURCE CODE” before a determination by the court from which the subpoena or order issued,
 3 unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear
 4 the burden and expense of seeking protection in that court of its confidential material – and nothing
 5 in these provisions should be construed as authorizing or encouraging a Receiving Party in this
 6 action to disobey a lawful directive from another court.

7 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
 8 **THIS LITIGATION.**

9 (a) The terms of this Order are applicable to information produced by a Non-Party in this
 10 action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
 11 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
 12 CODE.” Such information produced by Non-Parties in connection with this litigation
 13 is protected by the remedies and relief provided by this Order. Nothing in these
 14 provisions should be construed as prohibiting a Non-Party from seeking additional
 15 protections.

16 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
 17 Party’s confidential information in its possession, and the Party is subject to an
 18 agreement with the Non-Party not to produce the Non-Party’s confidential
 19 information, then the Party shall:

- 20 1. promptly notify in writing the Requesting Party and the Non-Party that some
 21 or all of the information requested is subject to a confidentiality agreement
 22 with a Non-Party;
- 23 2. promptly provide the Non-Party with a copy of the Stipulated Protective
 24 Order in this litigation, the relevant discovery request(s), and a reasonably
 25 specific description of the information requested; and
- 26 3. make the information requested available for inspection by the Non-Party.

27 (c) If the Non-Party fails to object or seek a protective order from this court within 14
 28 days of receiving the notice and accompanying information, the Receiving Party may

1 produce the Non-Party's confidential information responsive to the discovery request.
 2 If the Non-Party timely seeks a protective order, the Receiving Party shall not
 3 produce any information in its possession or control that is subject to the
 4 confidentiality agreement with the Non-Party before a determination by the court.
 5 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
 6 of seeking protection in this court of its Protected Material.

7 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 9 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
 10 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
 11 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material,
 12 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 13 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
 14 Be Bound" that is attached hereto as Exhibit A.

15 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED** 16 **MATERIAL.**

17 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
 18 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
 19 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
 20 modify whatever procedure may be established in an e-discovery order that provides for production
 21 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 22 parties reach an agreement on the effect of disclosure of a communication or information covered by
 23 the attorney-client privilege or work product protection, the parties may incorporate their agreement
 24 in the stipulated protective order submitted to the court.

25 **14. MISCELLANEOUS.**

26 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
 27 its modification by the court in the future.
 28

1 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order,
2 no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered by
5 this Protective Order.

6 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
7 laws and regulations relating to the export of technical data contained in such Protected Material,
8 including the release of such technical data to foreign persons or nationals in the United States or
9 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
10 data, and the Receiving Party shall take measures necessary to ensure compliance.

11 14.4 Filing Protected Material. Without written permission from the Designating Party or a
12 court order secured after appropriate notice to all interested persons, a Party may not file in the
13 public record in this action any Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
15 Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific
16 Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order
17 will issue only upon a request establishing that the Protected Material at issue is privileged,
18 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's
19 request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order
20 62 is denied by the court, then the Receiving Party may file the Protected Material in the public
21 record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

22 **15. FINAL DISPOSITION.**

23 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
24 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
25 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
26 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
27 the Protected Material is returned or destroyed, the Receiving Party must submit a written
28 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)

by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: May 11, 2012

VINSON & ELKINS LLP

By: /s/ Chuck P. Ebertin
Chuck P. Ebertin

Attorneys for Plaintiff and Counterclaim
Defendant SANDISK CORPORATION

Dated: May 11, 2012

DESMARAIS LLP

By: /s/ John C. Spaccarotella
John C. Spaccarotella (*admitted pro hac vice*)

Attorneys for Defendant and Counterclaim
Plaintiff ROUND ROCK RESEARCH LLC

GENERAL ORDER 45, SECTION X.B.


I, Chuck P. Ebertin, hereby attest that John Spaccarotella has concurred in the filing of this document.

By: /s/ Chuck P. Ebertin
Chuck P. Ebertin

[PROPOSED] ORDER

Pursuant to the above stipulation, **IT IS SO ORDERED.**

Dated: 5/14/12



Honorable Richard Seeborg
United States District Judge